

ORAL ARGUMENT NOT YET SCHEDULED**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

ASSOCIATED ELECTRIC COOPERATIVE, INC., et al.,

Petitioners,

No.: 23-1324

v.

Consolidated with lead case No. 23-1321

U.S. ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents.

NONBINDING STATEMENT OF ISSUES TO BE RAISED

Petitioners submit the following nonbinding statement of issues to be raised with regard to their petition for review of the U.S. Environmental Protection Agency's (EPA) final rule entitled "Federal 'Good Neighbor Plan' for the 2015 Ozone National Ambient Air Quality Standards; Response to Additional Judicial Stays of SIP Disapproval Action for Certain States," 88 Fed. Reg. 67,102 (Sept. 29, 2023) (Second Interim Final Rule):

1. Whether EPA acted arbitrarily and capriciously, abused its discretion, or acted contrary to law in the Second Interim Final Rule by staying its Federal Good Neighbor Plan for emissions sources in only six additional states, when judicial stays

have invalidated EPA's state-plan disapprovals that formed the legal basis for EPA's entire federal implementation plan.

2. Whether EPA's failure to examine the effect of removing and altering the requirements of the Federal Good Neighbor Plan previously imposed on the six additional states is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law.

3. Whether EPA's failure to analyze the costs, efficacy, and burdens imposed through the Second Interim Final Rule's alteration of the Federal Good Neighbor Plan is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law.

4. Whether the Second Interim Final Rule violates the Clean Air Act by imposing an altered federal plan that will over-control sources in upwind states.

5. Whether the Rule is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law because it allows the continued implementation of the Federal Good Neighbor Plan (the subject of a judicial challenge before this Court in the consolidated cases of *Utah v. EPA*, Case No. 23-1157), which is based on disapprovals of numerous state implementation plans that have been challenged and stayed in numerous federal appellate courts.

Date: December 21, 2023

Respectfully submitted,

/s/ Allison D. Wood

Allison D. Wood
Makram B. Jaber
McGUIREWOODS LLP
888 16th Street N.W., Suite 500
Black Lives Matter Plaza
Washington, DC 20006
(202) 857-2420
awood@mcguirewoods.com
mjaber@mcguirewoods.com

Counsel for America's Power, Associated Electric Cooperative, Inc., Deseret Power Electric Cooperative, the National Rural Electric Cooperative Association, Ohio Valley Electric Corporation, the Portland Cement Association, Wabash Valley Power Alliance

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December, 2023, I filed the foregoing document with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

/s/ Allison D. Wood

Allison D. Wood